protected by the Ordinance and that, except for arrears of rent, ejectment proceedings could not be brought against him without the permission of the Rent Assessment Board. As has been said there is no question of the rent being in arrear at any material time, and the permission of the Board was not obtained.

The appeal, therefore, must fail and is dismissed with taxed costs to the respondent.

Appeal dismissed.

TOH WHYE TECK v. THE HAPPY WORLD LTD.

[A. C. J. (Whitton, J.) May 18, 1953]

[Singapore — District Court Appeal No. 28 of 1952]

Landlord and tenant — Control of Rent Ordinance, 1947, s. 14(1)(j) — Onus of proof as to payment of Municipal services — Evidence Ordinance (Chapter 13) ss. 104 and 107.

In this case the District Judge found in favour of the respondent for recovery of possession under section 14 (1)(j). On appeal, it is agreed, that the issue was "on whom does the burden lie to show what sums came within the section and what payments are saved by this provision relating to Municipal services."

Held: (1) it is sufficient for the respondent to establish prima facie that the rent received by the tenant exceeded in the aggregate 75% of the rent paid to himself; (2) since the respondent has established a prima facie case the rent paid to the tenant falls within the section, the burden shifts on to the appellant to show that he is covered by the provisions regarding payment of Municipal services; (3) to hold otherwise would be an unreasonable burden on the landlord.

[Editorial Note:— Section 14(1)(j) of the Control of Rent Ordinance, 1947, has been repealed and re-enacted as section 15(1)(g) of the Control of Rent Ordinance, 1953.]

DISTRICT COURT APPEAL.

Lee Kuan Yew for the appellant.

Chong Thutt Pitt for the respondent.

Whitton, J., delivering oral judgment said: — In this case the District Judge found in favour of the plaintiff-respondent on the ground that he has brought himself within the provisions of section 14(1)(j) of the Control of Rent Ordinance, 1947. This section is one of the provisions which constitute exceptions to the general restriction on right to possession of premises coming within the scope of this Ordinance. In effect section 14(1)(j) states that where a landlord has let the premises to a tenant and the tenant has sub-let the premises or part thereof and in respect of such subletting receives rents (excluding any Municipal services paid by the tenant) which exceed in the aggregate seventy-five per cent. of the rent paid by the tenant, an order may be made for the recovery of the premises. Now this case, it is agreed, depends upon the issue raised by the question of the payment of Municipal services paid by the tenant. In calculating the rents received from sub-tenants in relation to those he pays to the landlord, the tenant is entitled to exclude any Municipal services paid for by himself. The question then arises on whom does the burden lie to show what sums would come within the section; and what payments are served by this provision relating to Municipal services. Mr. Lee Kuan Yew has argued with great ability that some evidence at least should have been produced by the plaintiff as to the payments made for Municipal services. If that evidence was forthcoming he would concede that the burden is then shifted to the defence. This argument is not to be dismissed lightly, but on reflection I consider it is sufficient for the plaintiff, if, as in this case, he establishes *prima facie* that the rents received by the tenant exceeded in the aggregate 75% of the rent paid to himself.

I would express the view that it is not only a question of section 107 of the Evidence Ordinance which has application here, but I think section 104 also has application. It reads, "The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

To sum up my conclusions, it seems to me that the landlord fulfils his responsibility if he shows *prima facie* that the rent paid to the tenant falls within the section. If he does that, then I think the burden shifts to the defendant to show that he is covered by the provision regarding payment for Municipal services. To hold otherwise, it seems to me, would be an unreasonable burden on the landlord, quite apart from the provisions of the Evidence Ordinance on the matter.

The appeal is dismissed with costs.

Appeal dismissed.

P. V. P. L. MEENATCHI (w) v. LALL SINGH & ORS.

[O. C. J. (Whitton, J.) May 22, 1953]

[Singapore — Suit No. 300 of 1952]

Hindu Law — "Karta" or the Managing member of the Hindu Joint Family — Whether a woman can be a "Karta" — Hindu Code, s. 131 — Co-parcenary.

This was a Summons in Chamber to amend the Writ of Summons so that the plaintiff may sue in the capacity of "Karta". The matter was adjourned into Open Court for hearing.

Held: (1) the onus is upon the plaintiff to prove that a woman can be a "karta"; (2) the plaintiff has not discharged this onus; (3) under section 131(1) of the Hindu Code, a woman cannot be a "karta".

APPLICATION TO AMEND WRIT OF SUMMONS

K. E. Hilborne for the plaintiff-applicant.

J. L. R. Pillai and *K. E. W. Hatchard* for the defendants.

Whitton, J. : — This is an application on the part of the plaintiff to amend the endorsement to the Writ of Summons in this action so that she may sue in the capacity of "karta" or the managing member of the Hindu Joint Family of P. P. V. P. L. The application was adjourned to Open Court for argument.

The application is opposed, broadly speaking, on two grounds; that a woman cannot be a "karta", and that the plaintiff has no status in the matter which entitles her to sue.

On the question of whether a woman can be a "karta" counsel have not been able to cite any conclusive statement from the authorities, nor have I been successful in discovering one myself, but it seems to me section 131 of The Hindu Code (*Gour* 4th Edition p. 442) goes far to support the view that a woman cannot be a "karta". This section reads :—

131. (1) Except in the case of a trading family, the father, and in his absence, the next senior male relation is the rightful manager of a co-parcenary;

(2) Provided that during the incapacity or absence of the manager or in case of emergency, any other co-parcener may with the express or implied consent of the co-parceners act for him.

It is not suggested this is a case of a trading family with regard to which, apparently, a female, who has inherited as a limited owner the estate of a deceased male owner, may be manager of a trade (*Gour* p. 471). Again it is quite settled that females cannot be co-parceners, and one would expect the fact to be mentioned in the text-books if there was ground for saying women could be "kartas" although they cannot be co-parceners. It is for the plaintiff to show she possesses the legal capacity in which she now seeks to carry on this action. In view of the absence of any positive authority that a woman can be a "karta", and of a good deal on the subject in the text-books which to my mind suggests the position can only be held by a male, I am unable to hold that the plaintiff has discharged this onus.

If I am correct in holding the plaintiff cannot be a "karta" that appears to be the end of the matter as it stands at the moment. I should perhaps state, however, that if the plaintiff was entitled to sue as "karta" it seems to me the other objections raised to this application would cease to have force. Once the standing of "karta" is established it appears clear that all members of the family are bound by his transactions as the family representative (*Mayne* on Hindu Law and Usage 11th Ed. p. 371). Again if this application was successful the capacity of the plaintiff would be clearly defined even though the form of her name on the plaint might still be open to the criticism Mr. Hatchard has levelled against it.

The application is dismissed with costs.

Appliction dismissed.

THE FIRM OF T. AR. CT.
v.
THE FIRM OF SN. S. AR. N.

[O.C.J. (Buhagiar, J.) June 1, 1953]

[Penang — Civil Suit No. 255 of 1951]

Limitation Ordinance, s. 3 — Practice and Procedure — Renewal of Writ of Summons after period of limitation — Defence of limitation must be pleaded — Period of limitation applicable to Thavanai letters.

This was an application to set aside an order for renewal of a Writ of Summons on the ground that the claim therein had become statute barred prior to the date of renewal. The claim was on a Thavanai letter which was payable on the 2nd October 1941. The writ was issued against the defendant on the 21st December 1951 and was not served until the 15th January 1953. A subsequent order for renewal and enlargement of time was obtained on the 6th February 1953 and this application is to set aside this order. The defendant submitted that the period of limitation begins to run from the date on which the Moratorium Proclamation 1949 came into force i.e. on 1st October 1949, and therefore under Article 41 or Article 42 of the Schedule to the Limitation Ordinance the plaintiff's claim became barred on the 2nd October 1952.

The two important points raised in this case were whether this Court **motu proprio** has power to dismiss a suit which is statute barred and secondly what is the period of limitation applicable to Thavanai letters.

Held: (1) under section 3 of the Limitation Ordinance, the Court is not bound of its own motion to look into the question of limitation; it is compelled to dismiss it if the claim is barred only if the defence of limitation is set up. The defendant in this case had no opportunity to set up that plea when the order for renewal was made but they have now done so in this application; (2) the Thavanai letter in this case should be treated as a deposit and the period of limitation should therefore be 3 years as laid down in Article 42 of the Schedule to the Ordinance.

Cases referred to :—

(1) *Holman v. George Elliot & Co. Ltd.* (1944) K.B. 591.

(2) *Battersby v. Anglo-American Oil Co. Ltd.* (1945) 1 K.B. 23.

(3) *Cheang Cheow Lean Neo v. Low Kim Pong* (1897), 5 S.S.L.R. 22 at p. 26.